

disappointment and disillusion will not result. Moreover, pair marriage, by its exclusiveness, risks the happiness of the parties on a very narrow and specific condition of life. The coercion of this arrangement for many persons must become intolerable.

In the ancient German law there was absolute freedom of divorce by agreement. The pair could end the relation just as they formed it. In the laws of the German nations there was little provision for divorce upon the complaint of the woman. The law of the Langobards allowed it to her for serious bodily injury.<sup>1</sup>

395. Divorce in the Middle Ages. It is pretended that the mediaeval church allowed no divorce. This is utterly untrue. Under the influence of asceticism the church put marriage under more and more arbitrary restrictions, going far beyond any rules to be found in the Scriptures, or in the usages of the early church. Divorce was made more and more difficult. These two tendencies contradicted each other, for the greater the restrictions on marriage, the greater the probability that any marriage would be found to have violated one of them, and therefore to be *ab initio* void. This set it aside more absolutely than any divorce *a mnculo* could undo it. Also, when there was an ample apparatus of dispensation by which the rich and great could have their marriages dissolved, by the use of money or political power, the "law of the church" was no law. Still further, the mediaeval church, while it had a doctrine of perfection and ideality for marriage, had also a practical system of concession to human weakness, by which it could meet cases of unhappy marriage. In the canon law, divorce and remarriage of the

innocent party has  
been allowed to the man, in case of adultery,  
physical incapacity,  
leprosy, desertion, captivity, disappearance, and  
conspiracy to  
murder the husband, on the part of the wife; and  
to the wife,  
when the husband's misconduct rendered living  
with him impos-  
sible. However, a dispensation from the  
ecclesiastical authority  
was required.<sup>2</sup>

396. The point of this is that no society ever has  
existed or  
ever can exist in which no divorce is allowed. In  
all stages of

<sup>1</sup> Heusler, *Dent. Privatrecht*, II, 291.  
*Canon.Law*<sup>^</sup> I, 343.

<sup>2</sup> Reichel,